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Patrick C. Dubbert

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POLSTER, LIEDER, WOODRUFF & LUCCHESI
12412 POWERSCOURT DRIVE SUITE 200
ST. LOUIS, MO 63131-3615

EXAMINER

CHIN SHUE, ALVIN C

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Please find below and/or attached an Office communication concerning this application or proceeding.

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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/826,782
Filing Date: April 16, 2004
Appelant(s): DUBBERT ET AL.

Attorney Soifer
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 12/30/08 appealing from the Office action mailed 3/3/08.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

4,850,453	St-Germain	7-453
3,690,613	Shoemaker	9-1972
3,741,516	Rugger	6-1973

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 16-18 are rejected under 35 U.S.C. 103(a) as being unpatentable over St-Germain in view of Shoemaker and Rugger. St-Germain shows the claimed assembly having the claimed standoff having a bracket at 5-9,11, a standoff leg at

10 and dowel at 23, the claimed difference being the attachment strap and retainer body. Shoemaker shows an attachment strap 34 with an eyelet 52, a retainer having a body 20 with slotted walls 78, and a wedge 22. Rugger shows an attachment strap made from a flexible material. It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide St-Germain with an attachment strap and retainer, as taught by Shoemaker, and for the strap to be made of a flexible material, as taught by Rugger, to provide a flexible attachment member that is capable of being used with his standoff bracket and being capable of attaching to a wall. To slope the surface of the slots to correspond to the slope of the wedge, would have been an obvious engineering expediency.

(10) Response to Argument

Appellant argues that none of the applied references teach either a flexible attachment strap or a standoff as set forth in claim 16 (note Appellant's arguments, page 10, lines 17-20). The examiner disagrees as St-Germain shows a scaffold attachment assembly showing a standoff bracket for an attachment strap comprising all the claimed elements of the standoff bracket. Shoemaker shows an attachment comprising the claimed strap 34 having an eyelet 52 and slot 50 and a retainer 20 having slotted walls 78 and a wedge 22, as claimed, Shoemaker further states in paragraph (3) that a flat tie rod of the character or type under

consideration has a flexible tie rod end (column 2, line 20). The strap of Shoemaker is therefore a flexible strap contrary to Appellant's assertion (note page 11, line 4) that Shoemaker's strap is a "rigid" tie rod, no such limitation of a rigid tie rod is found in the reference to Shoemaker. Appellant similarly argues that Rugger shows a "rigid" tie strap, again no such limitation is found in Rugger, but Rugger states that his strap 14 with portion at 17, note fig. 3, is a leaf spring strip (flexible).

With respect to the combination of the above references, Appellant argues that the cited references do not contain any suggestion to combine the elements, that the references teaches away from the combination (page 10, lines, 20,21), render St-Germain inoperable and would change the principle of operation (page 12, line 19). First it is noted that the claims are directed an attachment assembly and not to an attachment assembly in combination with a scaffolding system and a retaining wall, and furthermore, the attachment assembly is recited has comprising a STANDOFF BRACKET and a FLEXIBLE ATTACHMENT STRAP AND RETAINER, wherein the flexible attachment strap and retainer is "capable of" being attached to the bracket (the eyelet of the strap sized and shaped TO FIT over the standoff dowel. The examiner notes the difference to be resolved between St-Germain (of the same filed of endeavor as Appellant's disclosed invention), is the

claimed attachment strap with a retainer. Shoemaker shows the claimed attachment strap and retainer being used to retain an element (form wall 33) against a concrete wall wherein the strap extends through the wall and the retainer wedges the form wall element against the wall, thus Shoemaker having all the claimed elements for the purpose of securing an element (form) to a wall is deemed to be an analogous art, and it is deemed proper for one of ordinary skill in the art to appreciate teachings of analogous arts to resolve the differences at hand. With respect to the teaching of Rugger, such is used to show that tie straps made of a flexible material is conventional in the art, and as noted Shoemaker's tie strap is flexible.

Appellant's argument that one would replace the rigid beam 10 of St. Germain (page 12, line 17), such is incorrect as the beam 10 is considered to be the standoff leg of the bracket, and as stated in the rejection, in view of the claims reciting only that the strap is TO FIT over the dowel, the strap as taught by Shoemaker is CAPABLE of being used with the dowel of St Germain so that his scaffolding is CAPABLE of being secured to a wall as DISCLOSED by Appellant's invention.

With respect to claim 18, to slope the surfaces of the slot and wedge to be correspondingly sloped would have been an obvious engineering expediency, this inherently would provide an enlarged sliding surface that would facilitate insertion.

With respect to Appellant's arguments regarding the restriction, such is a petitionable matter and not appealable. See MPEP 1201 and 37 CFR § 1.144 below.

MPEP 1201.

The line of demarcation between appealable matters for the Board of Patent Appeals and Interferences (Board) and petitionable matters for the Director of the U.S. Patent and Trademark Office (Director) should be carefully observed. The Board will not ordinarily hear a question that should be decided by the Director on petition, and the Director will not ordinarily entertain a petition where the question presented is a matter appealable to the Board. However, since 37 CFR 1.181(f) states that any petition not filed within 2 months from the action complained of may be dismissed as untimely and since 37 CFR 1.144 states that petitions from restriction requirements must be filed no later than appeal, petitionable matters will rarely be present in a case by the time it is before the Board for a decision. In re Watkinson, 900 F.2d 230, 14 USPQ2d 1407 (Fed. Cir. 1990)

37 CFR § 1.144

37 CFR § 1.144 Petition from requirement for restriction.

After a final requirement for restriction, the applicant, in addition to making any reply due on the remainder of the action, may petition the Director to review

the requirement. Petition may be deferred until after final action on or allowance of claims to the invention elected, but must be filed not later than appeal. A petition will not be considered if reconsideration of the requirement was not requested (see § 1.181).

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Alvin C. Chin-Shue/

Primary Examiner, Art Unit 3634

Conferees:

Darnell Jayne: /dj/

Blair Johnson:/B. M. J./

Alvin Chin-Shue: /A. C. C./